

## MORE DETAILED RECOMMENDATIONS AND IDEAS<sup>1</sup>

### BETTER SCIENCE AND ECONOMIC ANALYSIS

#### Science

- Reinforce the role of Assistant Administrators and Regional Administrators in developing and using science. The Assistant Administrators and Regional Administrators have key responsibilities in EPA for the development and use of science in their programs. Managers may need training and assistance to help ensure that they are able to deal with science issues in a rule and ensure that the appropriate science questions have been asked at the proper places in the process.
- Recruit and retain high quality scientists. EPA should increase the placement of top-flight scientists throughout the Agency, and support the scientists that we have.
- Strengthen research. Sound science in EPA starts with a strong research foundation. Numerous external committees have recommended ways to strengthen research in the EPA. Where appropriate, these recommendations should be supported and implemented.
- Identify scientific uncertainties and limitations. Continue emphasizing peer review and transparency. In keeping with the Agency's risk characterization policy, place more emphasis on clearly articulating the uncertainties and limitations of scientific assessments.
- Improve the participation of external groups in science issues. Update the Agency's basic regulatory development approach, drawing upon the recent reports from the National Academy of Sciences, Science Advisory Board, and others, to systematically involve external groups in providing scientific input into Agency decisions.
- Improve access to Agency data. Develop state-of-the-art information systems to maintain, track, and enable ready access to Agency data.
- Periodically review rules for unanticipated scientific issues. For Tier 3 rules, periodically and explicitly check to determine whether new scientific issues have arisen that would require additional scientific participation in the rulemaking process.

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<sup>1</sup> Members of the Task Force did not agree with all of these recommendations and ideas. Thus, some of them will need to be discussed further before a decision is made to implement them. The recommendations and ideas are discussed in more detail in the reports of the Science, Economics, Policy, and Process Workgroups.

- Provide feedback to program managers on their analyses of scientific issues. Discuss the implications of decisions related to planning the scope, approach, and level of effort for analyses. Include any implications for the science used -- specifically, discuss whether it may lead to a legally, scientifically, or politically vulnerable policy decision – to ensure that the implications of these choices are understood before a final decision is made.
- Use analytic blueprints to plan and guide scientific analyses throughout the decision-making process. Rely on the blueprint to identify and track the development of technical information and analyses.
- Take scientific analyses into account in setting schedules for rulemaking. Use analytic blueprints to develop policymaking schedules that optimize the amount of time available for scientific analyses, and reward staff and managers who write and use analytic blueprints accordingly.
- Consolidate science expertise in program offices. Where appropriate, ensure more deliberate and consistent consideration of science in rulemaking by bringing scientific staff together to assist and support regulatory development.
- Strengthen managers' and rulewriters' understanding of recent scientific developments that affect major rules. Establish a mechanism for periodic knowledge assessments in areas that impact major rules and where the “state of the science” is changing. Focus on providing regulatory managers and staff with an up-to-date understanding of the many science issues that may affect their rule in the present and future.

## **Economics**

- Recruit and train additional economists. Develop economic expertise in organizations that lack it now, and provide opportunities for economists to stay current on the state of economic science.
- Obtain cross-agency concurrence on analytic blueprints that raise novel or precedent-setting economic issues. Rely on cross-agency review of analytic blueprints for rules deemed economically significant or any other rules that may pose novel or precedent-setting economic issues. Determine whether such issues exist at the options specification stage, with an economist's assistance.
- Clarify role of the National Center for Environmental Economics (NCEE). Clarify that NCEE provides expert consulting services to programs (where requested), rather than conducting the economic analysis itself, and provides a conduit through which EPA offices and staff can raise questions about economic issues, methods, and assumptions to enhance coordination and reduce duplication of effort. Specify a process for making assistance requests.

- Standardize presentation of results of economic analyses. Develop a standardized presentation for reporting results of economic analyses across the Agency.
- Develop a strategy for responding to comments from academic and professional institutions on Agency economic analyses. Resolve how EPA will determine whether and how to respond to comments on its economic analysis from external groups. Consider designating an organization within EPA to be responsible for deciding whether to respond, and, where required, for responding.
- Provide internal peer review to promote high-quality economic analysis. As a pilot project, have cross-Agency panels of economic experts review the economic analyses on a small number of significant rules and other significant actions.

## **BROADER CONSIDERATION OF POLICY OPTIONS**

### Analytic blueprint

- Enforce existing requirement to prepare blueprints for all Tier 1 and 2 rules.
- Use analytic blueprints to address all significant issues in rules. Use blueprints as a tool for considering all relevant science, economic, and policy issues early in the development process. Ensure that these documents reflect directions from management concerning priorities, time and resource constraints, how analyses will be conducted, applicability, etc.
- Improve guidance on preparing analytic blueprints. Have the Regulatory Steering Committee and OPEI review and revise the current guidance to make it more comprehensive and helpful to rulewriters. Consult workgroup chairs in this effort.
- Improve training on preparing analytic blueprints. Charge OPEI with evaluating current training to identify improvements and ways of making it available to managers and staff on a more regular basis.
- Ensure that resource needs identified in analytic blueprints are considered in the budget process. Create a mechanism to ensure that resources required for the blueprint's execution are accounted for in the Agency's budget process.
- Elevate issues if necessary to obtain approval of analytic blueprints. Direct workgroup chairs to enlist the assistance of their line management when having difficulty obtaining approvals for blueprints. If approval is not possible at this level, request help from the Regulatory Steering Committee representative before elevating it to the Assistant Administrator level. Incorporate this process into the Action Development Process and analytic blueprint guidance. Develop a process for approving addenda to the blueprint.

- Document decisions on cross-cutting issues. Minimize one-on-one meetings between Assistant Administrators and Regional Administrators and the Administrator/Deputy Administrator about rule issues that could be of interest to other program offices. When resolution of issues is time-sensitive and such meetings are needed, ensure that all significant decisions made are documented and provided to all workgroup members in a timely fashion. Subsequently, workgroup members should ensure their own Assistant Administrators or Regional Administrators are informed of these decisions.

#### Involvement of external groups

- Integrate guidance on statutory and Executive Order consultation requirements. To help the workgroup chair comply with consultation requirements, develop a concise, consolidated guide that integrates all the statutory and Executive Order consultation requirements in one document. This guide should define consultation and emphasize that it requires two way communications. It should also explain how to develop an outreach process that will comply with all applicable requirements while using EPA's resources efficiently (e.g., how to develop outreach mechanisms that can fulfill multiple consultation requirements). At a minimum, include: (1) a flowchart highlighting the types of consultation and when consultation is appropriate and (2) a directory of parties one can consult with to meet the requirements.
- Ensure appropriate State and Tribal involvement in rulemakings. Direct the Regulatory Steering Committee to explore mechanisms for ensuring appropriate State and Tribal involvement in rulemakings, in conjunction with development of related guidance on the Federalism/Tribal Executive Order and the consultation guidance recommended in the previous bullet. Consider the following issues: the need to develop established channels of communications with elected officials; how to balance the availability of State/Tribal resources with the large number of rules under development in the Agency; and legal requirements that apply to Agency consultations during the rulemaking process.
- Maximize the use of the Internet for rulemaking and other policy processes. Evaluate how the latest advances in technology might be used to improve stakeholder outreach (e.g., using Internet briefings to obtain input from states and other stakeholders, providing electronic access to rulemaking dockets and *Federal Register* notices). For example:
  - Develop a strategy for maximizing the use of the Internet. Use the Internet to engage the public in rulemaking and other policy making processes (e.g., by creating a central web portal to identify rules being considered or under development, soliciting public comments on rules via the web, providing electronic access to rulemaking dockets, and reformatting *Federal Register* notices to facilitate electronic access).

- Utilize EPA's list-serve capabilities. Make greater use of EPA's list-serve capabilities to increase stakeholder involvement in rulemaking activities.
- Identify approaches for bridging the "digital divide". Identify and use other outreach mechanisms to engage stakeholders who do not have access to the Internet.
- Identify new stakeholder groups. Take a fresh look at new stakeholder groups that have formed around new problems (place-based citizen networks and media-specific associations that focus on technical and policy issues) and include their web sites and contact information in outreach efforts. Build this new list into the stakeholder involvement module of EPA's Regulatory Development Course.

Ensure full analysis of implementation issues, including enforcement. Address this important issue through several mechanisms (some of which are discussed in the Task Force Report or in this document):

- Target OECA involvement in rulemaking. OECA should continue to actively participate in the development of rules through targeted participation in the development of analytic blueprints and review of early drafts of rules with significant compliance assurance issues.
- Include implementation issues in training for rulewriters. Consider how rules will be implemented and enforced during their development.
- Use external groups to help identify implementation issues. Consider how stakeholders could be engaged to help identify potential implementation issues, and then work with them toward resolution.

Issue more compliance guides.

- Make rulewriters aware of their responsibility to prepare compliance guides. Promote EPA's internal guidance on this issue - the March 1999 Revised Interim Guidance for EPA Rule writers (available at <http://intranet.epa.gov/rapids>). Consider developing outlines of guides during the rulemaking process to help facilitate and expedite the development of guides for the final rule.
- Have Regulatory Steering Committee track development of compliance guides. Create accountability by requiring quarterly progress reports to the Regulatory Steering Committee.
- Issue compliance guides as a matter of policy for rules that affect small businesses. Consider developing compliance guides for any rule that will affect small businesses, even if the rule is not "economically significant" and is not expected to have a significant impact on a substantial number of small entities.

#### Facilitate compliance with the Paperwork Reduction Act requirements

- Establish a fast-track approval process for certain ICRs. In coordination with OMB, develop a fast-track process for obtaining OMB review and approval of collections that are simple, one-time, and/or noncontroversial.
- Submit ICRs electronically. Establish a process for submitting ICRS and rules electronically to OMB. (NOTE: May be addressed by OMB's new computer system, ROCIS.)

#### Address small business issues

- Reiterate the “Any/Any” policy. Emphasize the importance of assessing any impacts a rule may have on any small business (often referred to as the “Any/Any policy”) and the importance of engaging potentially regulated entities in a dialogue about the rule and minimizing the impacts to the extent feasible.

#### Ensure full consideration of children’s health in rulemakings

- Consider children’s health issues early. For rulemakings with children's health implications, ensure early participation by the Office of Children's Health Protection and other program offices with relevant responsibilities.
- Evaluate the effectiveness of regulations in protecting children’s health. Consider evaluating the effectiveness of the regulatory process in protecting children’s health since E.O. 13045 (Protection of Children from Environmental Health Risks and Safety Risks) was published.

#### Incorporate innovative approaches in regulations

- Consider innovative approaches early. Ensure that innovative approaches and attendant data needs are considered early in the rule development process (where innovative approaches are not restricted by law). Involve OPEI early in the process.
- Share success stories. Compile and evaluate information on the types of regulatory innovations that have proven successful, and provide this information to rulewriters for consideration in upcoming rules. OPEI could convert their many reports on this subject into seminars for rulewriters and or include the material in the EPA Regulatory Development Course.
- Evaluate how innovative approaches are working. Establish a mechanism for evaluating innovations in regulations to ensure that environmental goals are being achieved and to determine whether regulatory adjustments are needed.

Consolidate/integrate cross-EPA Policy Councils (e.g., Science Policy Council, Regulatory Policy Council, Economic Policy Council)

- Consolidate the Regulatory Policy Council, Science Policy Council and Economic Policy Council into a Senior Policy Council. Establish a Senior Policy Council to ensure that scientific, policy, and economic issues are considered together, not in isolation.
  - The Council would help ensure that the Administrator and Deputy Administrator's policy views and priorities are considered when developing policy positions (regulatory or non-regulatory).
  - The Council would also examine EPA regulatory policies as a whole to determine whether they are consistent across the Agency and effective in protecting and enhancing environmental quality.
- Improve coordination between the Science Policy Council (SPC) and the Regulatory Steering Committee (RSC). Establish a mechanism to exchange information between the RSC and the SPC about issues being addressed by the SPC so the RSC can identify those issues that might impact the rulemaking process and ensure the involvement of Agency personnel who know and understand the rulemaking process. The Steering Committees for the Regulatory and Science councils may be able to develop an approach to use these committees as the primary vehicle for coordination. The approach could include inviting RSC representatives when the SPC staff pre-brief program office Deputy Assistant Administrators prior to SPC meetings, and having SPC staff brief the RSC directly on issues that have the potential to significantly impact the rulemaking process.

## **GREATER ACCOUNTABILITY**

Strong management

- Support and manage staff working on other offices' rulemakings. Line managers should provide their staff sufficient time to fulfill their duties on other offices' workgroups, reinforce the importance of that responsibility, and ensure that staff are appropriately elevating significant issues for resolution early.
- Recognize and reward good management of the rulemaking process. The performance standards of Assistant Administrators, Regional Administrators, and other line managers should reflect the importance of managing the rulemaking process. The Agency should recognize and reward good rule management.

- Encourage staff to elevate issues. Have senior managers clarify to staff that they are available to resolve issues that can't be resolved at lower levels and maintain regular communication with their staff on rule status and issues.

### Tiering

- Make tiering a high priority. Direct program offices to place a higher priority on reviewing tiering forms to ensure that the classification is appropriate (e.g., was a rule with cross-program impacts inappropriately classified as a Tier 3 action?).
- Improve tiering form to enhance workgroup participation. Put more emphasis on thorough preparation of tiering forms. Ensure that abstracts are detailed and use plain language (to help explain the rule to the public as well as other EPA program offices who may not be expert in the issue). Focus more attention on identifying potential cross-media impacts. Identify why certain EPA organizations should be represented on the workgroup. Direct rulewriters to followup with organizations if a request for participation does not elicit a positive response. Also, conduct a review of the existing form to identify other revisions that might eliminate unnecessary information and facilitate the regulatory development process.
- Identify potentially interested EPA offices and the issues that trigger their involvement in regulation development. Encourage non-media support offices (except for OGC) to specify and share information on the types of rules they are interested in participating in and the particular issues that would trigger their involvement.
- Tier rules in the early stages of rule development. Reinforce this message to regulatory managers and staff. Affirm that tiering process should proceed even if some questions are not answerable. Direct staff to fill in data as it becomes available. Clarify the Action Development Process guidance regarding the criteria and process for moving a rule into a higher or lower tier. Reinforce that rules should be entered into a higher tier if significant issues arise later in the process, and encourage workgroup members to recommend tier adjustments if they believe that such action is warranted. Elevate disagreements regarding the appropriate tier to line management, and then to the programs' Regulatory Steering Committee representatives before being elevated to Assistant Administrators.
- Re-evaluate guidance for Tier 3 rules. Determine if further changes to EPA's guidance for the Action Development Process are needed to ensure appropriate involvement by other offices, beyond those recommended elsewhere in this report (e.g., changes related to tiering, analytic blueprint).

### Workgroups

- Ensure appropriate representation by affected offices



- Use analytic blueprint to help refine workgroup participation by other offices in Tier 1 and 2 rules. Provide support offices with the analytic blueprint (or early drafts) to help them determine the best approach for their involvement in the workgroup process and understand the approach that will be used for internal EPA coordination. For example, the support offices may be able to identify key issues or analyses they need to participate in, or key points in the process they want to be part of (e.g., consultation), rather than planning to attend all the workgroup meetings. In such cases, the workgroup chair should ensure they are brought back into the process at appropriate times. When not participating on a regular basis, workgroup members from support offices need to take responsibility for checking back in with the workgroup chair periodically on rule progress.
- Use work plans to identify workgroup participants from other offices in Tier 3 rules. For Tier 3 rules without analytic blueprints, similar agreements on participation between the lead and support offices can be reached in the early stages of rule development, after the lead office is able to informally articulate its desired wording for the rule. Side agreements that were negotiated at tiering can be modified as needed.
- Establish generic side agreements. Establish generic side agreement to be used at the time of the tiering process by all non-media support offices (e.g., ORD, OECA) that participate in Tier 3 rules, in lieu of negotiating individual side agreements. As the rule proceeds and more information becomes available, if any workgroup member determines that his/her participation level should be changed, they should negotiate a modified side agreement with the workgroup chair.
- Enlist managers to help enforce side agreements. Instruct workgroup members to enlist the assistance of their line management when having difficulty enforcing the provisions of side agreements. If resolution still proves difficult, request help from the Regulatory Steering Committee representative before elevating the issue to the Assistant Administrator level. Incorporate this elevation process into the Action Development Process guidance.
- Assign qualified staff as workgroup chairs. Management should focus more attention on assigning the most qualified staff to chairing workgroups, especially for important rules. The recommendations on “*Training and Support for Rulewriters and Managers*” in the report issued by the Process Workgroup also address the need to provide rulewriters better support and to improve incentives for keeping good rulewriters in those positions.
- Evaluate use of a centralized rulewriting office. Direct the Regulatory Steering Committee to explore this approach, which is used by some other agencies (e.g.,

FDA), and to determine its viability for Tier 1 rules and potential for enhancing the quality of rules. Among other things, the Regulatory Steering Committee could consider using senior personnel to act as “rule managers”, who would draw upon relevant expertise from the media and support offices.

- Provide support to workgroups in understanding analytical requirements, conducting high quality analyses, and addressing Agency priorities
  - Make greater efforts to recognize and retain good rulewriters. Develop better retention incentives for experienced rulewriters who manage high quality and timely rule packages. Reward and recognize efficient rulewriters, rather than focusing on “crisis managers.”
  - Use latest technological advances to support rulewriters. Consider the opportunities created by new technologies, such as “expert” computer systems that walk a rulewriter through the rule development process or Intranet “hotlines” that could be created to answer regulatory development issues for EPA rulewriters. Evaluate the OPPTS “regulatory advisor” system, which helps the regulatory community determine their compliance activities, for use as a potential template.
  - Establish a cadre of professional rulewriters. Consider having professional technical writers available to assist workgroup chairs in writing clear, well-organized, plain language rules (rather than relying on OGC and other rule reviewers to re-write poorly written rules).
  - Learn how other agencies recruit and retain good rulewriters. Benchmark and apply information on how other agencies recruit, retain, and provide workforce development opportunities for rulewriters.
  - Complete the updated Unfunded Mandates Reform Act UMRA guidance. Make it a priority to complete the updated UMRA guidance.

#### Final agency review (FAR)

- Better enforce the current FAR requirements. Specify that OPEI will only schedule a FAR meeting at the request of the program Regulatory Steering Committee representative and only after that representative has ascertained that all key issues have been addressed (which does not mean consensus on the rule) and all required analyses have been substantially completed and made available to the entire workgroup for review.
- Enforce 3-week review of rulemaking packages. Provide a full 3-week (15 working days) review for the FAR. Grant a shorter time for FARs only with workgroup members’ agreement

and concurrence by the Regulatory Steering Committee representatives from the offices represented on the workgroup. Consider establishing criteria for when a shorter time frame for FAR could be appropriate (e.g., legal deadlines, Administrator priority).

- Require written responses to requests for concurrence. Require from all offices represented on the workgroup for all types of positions (i.e., concur without comment, concur with comment, non-concur).
- Eliminate “default concurrences”. Rectify the existing FAR announcement memorandum that states:

If a workgroup member does not attend the FAR meeting, or contact the workgroup chair and/or OPEI/RMD with comments, then the workgroup assumes a response of "concur without comment" from the absent office.

In cases where no input is received, direct OPEI to contact the Regulatory Steering Committee representative or Regional Regulatory Contact from that office to obtain their position as soon as possible, preferably within 1 day. OPEI will support the lead office in obtaining final responses quickly, however, so as not to hold up the rulemaking process.

- Update list of Regional delegations for rulemaking concurrences. Assign responsibility to OPEI; also have OPEI work with their Lead Region to explore ways of making it more visible within the Regions.

#### Evaluate the effectiveness of regulations

- Identify environmental goals early. For rules that are designed to reduce pressures on public health or the environment (e.g., pollution, habitat destruction), clarify the desired environmental goals of the regulation as early as possible.
- Identify data needed to measure desired outcomes. Where appropriate and feasible, identify the desired environmental outcomes of a regulation, identify the data needed to measure performance, and incorporate the collection of these data into the monitoring and reporting requirements of the regulation.
- Evaluate the effectiveness of regulations in achieving desired outcomes. Track and assess the effectiveness of regulations in achieving their desired environmental outcomes on a continuing basis.

## **BETTER MANAGEMENT OF SIGNIFICANT NON-RULE AGENCY ACTIONS**

Science Policy Council should tier significant work products. Tier these products internally to ensure broad awareness within the Agency and provide an opportunity for all relevant Agency personnel to participate in their development.